



April 20, 2005

Morning Business:
Biographies of Blocked Judges

Floor Speaker:

Senator Craig
Senator Hatch
Senator Burr

Noteworthy:

Op-ed by Sen. Lamar Alexander: Senate can do better than a deadlock over judges, filibusters, *The Tennessean*, 4/19/05

Frist: Filibuster Ban Won't Include Bills; Jesse J. Holland, *Associated Press*

Events:

4/20/05: Republican Freshmen Senators to Hold Press Conference to Discuss Judicial Nominees; 11 am; Senate Swamp

Myth vs. Fact:

Myth: Democrats want to continue debating these nominations so they can reach a compromise with the Republican majority.

Fact: The Democrats have threatened to “shutdown the senate” rather than carry out their constitutional obligation to provide an up or down vote on judicial nominees.

Sen. Harry Reid (D-NV): “[N]o Senate right is more fundamental than the right to debate. Should the Majority choose to break the rules that give us that right; the Majority should not expect to receive cooperation from the Minority in the conduct of Senate business.” (Sen. Harry Reid, Letter To Sen. Bill Frist, 3/15/05)

“This month, Democrats may use procedural tricks to stop all Senate business and block a Republican effort to eliminate minority filibuster rights ...” (Joe Klein, Op-Ed, “A New Idea For Democrats: Democracy,” *Time*, 4/11/05)

MEDIA ADVISORY

Republican Freshmen Senators to Hold Press Conference

To Discuss Judicial Nominees

Who: Senators Richard Burr, Tom Coburn, Jim DeMint, Johnny Isakson, John Thune and David Vitter

When: Wednesday, April 20, 2005 at 11:00 AM

Where: Senate Swamp

Op-ed by Sen. Lamar Alexander: Senate can do better than a deadlock over judges, filibusters, *The Tennessean*, 4/19/05

By SEN. LAMAR ALEXANDER

A country music song has a line something like this: "There's a light at the end of the tunnel, and I hope it ain't no train."

I am beginning to think it is a train and that there is not much way to avoid a train wreck. The train wreck I am talking about is a threat by the Democratic minority to "shut the Senate down in every way" if the Republican majority adopts rules that will allow us to do what the Senate has done for 200 years, which is to vote up or down the president's appellate judicial nominees.

Until recently, not to vote at all on a president's judicial nominee was unimaginable. Take the case of Clarence Thomas in 1991: The first President Bush nominated him to the U.S. Supreme Court. The Thomas nomination sparked as passionate a debate as I have seen in the Senate. But he was nominated in July, the Senate voted in October 52-48, and it was done.

Yet, in the last session of Congress, for some reason that still escapes me, the minority felt it had to use the filibuster to deny an up-or-down vote 10 times on 52 of the president's appellate judicial nominees. That has never happened before (with a single arguable exception). Neither party has used the tactic of denying an up-or-down vote on judicial nominees in 200 years.

The question is not whether the Senate has the power to adopt its rules by majority vote; it unquestionably does. That is common sense. The question is, whether it should. I believe that a rules change is not good for the Senate, not good for the country or for Republicans or Democrats. The nation needs a Senate that by its procedures gives unusual protection to minority rights.

Alexis de Tocqueville, in the early 19th century, warned of "the tyranny of the majority" in the American democracy. In South Africa, we saw a political miracle because the new black majority respected the property rights of the white minority. In 1967, when I came to

work in the Senate, there were 64 Democrats and 36 Republicans, and the Republicans were the ones worrying about protecting minority rights.

But minority rights can also be abused. In the 1930s, the 1940s, the 1950s and the 1960s, the filibuster was used to deny black Americans the right to vote. It was used to keep the poll tax. It was used to stop a federal anti-lynching law. It was used to keep African-Americans from sitting down and eating at public lunch counters in Nashville.

I believe it is a mistake for the Democrats to provoke a rules change, and I believe it is a bigger mistake, as they have threatened, to "shut down the Senate," if it happens. Last month, three dozen Democrats stood on the steps of the Capitol and basically threatened to do that. In December, Sen. Charles Schumer from New York said that if Republicans restore the tradition of majority vote on judicial nominees, the Democrats would "make the Senate look like a banana republic ... and cause us to try to shut it down in every way."

I don't believe the American people like the idea of Washington politicians threatening to "shut the Senate down in every way." As I remember, the last prominent political leader who said something like that was Newt Gingrich, 10 years ago. It backfired, and he was out of office in about a year. The people expect us to do our jobs.

I am afraid, if the Democrats continue to use the filibuster to prevent an up-or-down vote on judicial nominees, we may have no choice but to change the rules to limit filibusters. But I still have hope that Sen. Bill Frist and Democratic Leader Harry Reid can work together to keep this train wreck from happening.

I have offered a suggestion about how I, as one senator, could help. I have said on several occasions that I would give up my right to filibuster a president's nominee for an appellate judgeship even if the president was a Democrat. I might vote against that nominee, but I would never filibuster.

Now, if a few other senators, Democrats and Republicans, would make the same pledge, then there would be no need for a rules change, and there would be no need for a train wreck. The right thing to do is to have an up-or-down vote on the president's federal appellate judicial nominees. That has been the way we have done it for 200 years. The wrong thing to do is to shut the Senate down in every way.

Lamar Alexander is a U.S. senator from Tennessee.

Frist: Filibuster Ban Won't Include Bills

By JESSE J. HOLLAND Associated Press Writer
The Associated Press
WASHINGTON

Senate Majority Leader Bill Frist pledged Tuesday that any effort by Republicans to ban Democratic filibusters of President Bush's judicial nominees would not apply to filibusters on legislation.

"There is no need for change in relation to legislative matters," Frist said in a statement issued before GOP senators met for their weekly policy meeting.

But Democrats quickly questioned whether other future Republican leaders would do the same if Frist opens the door by changing the rules to ban judicial filibusters. "Every time I talk to Senator Frist I say, 'You're

going to be leaving here in a year and a half. What kind of a legacy do you want?" Senate Democratic leader Harry Reid of Nevada said Tuesday.

Frist, who has said he would leave the Senate after 2006, is working to ensure he has 50 votes to approve a rules change that would end Democrats' ability to threaten filibusters of Bush's judicial nominees. Democrats blocked 10 of Bush's first-term appeals court nominations through filibuster threats and allowed confirmation of 34. Bush has re-nominated seven of the 10.

While it takes only a majority vote to change Senate rules, it takes 60 senators to end a filibuster. The Senate has 55 Republicans, 44 Democrats and a Democrat-leaning independent.

Reid suggested last week that getting rid of the legislative filibuster could be Frist's next target if he wins on the judicial filibuster. On Tuesday, he suggested that Frist might also stop senators from blocking other kind of presidential nominees like John Bolton, Bush's nominee for United Nations ambassador.

Democrats are considering whether to try a filibuster of Bolton, who has been painted as an imperious hothead who dressed down junior bureaucrats and withheld information from his superiors in his current job as the State Department's arms control chief.

"If they're going to do it with judges, why can't they do it with Bolton and other nominees?" Reid said.

Deputy Majority Leader Mitch McConnell, R-Ken., said he hoped that Democrats would not filibuster Bolton. "If they don't like him, they can vote against him. But I think filibustering him is not a good idea," he said.

McConnell also said Republicans aren't going to strike the legislative filibuster. "There is no one I know of on our side who wants to get rid of the legislative filibuster," he said.

But the possibility concerns some conservative groups like the Gun Owners of America and the National Right to Work Committee, which oppose a judicial filibuster ban, saying a ban on legislative filibusters might be next. They say Republicans have used legislative filibuster threats to stop antigun and pro-union legislation and that weapon is too important to lose.

But Frist's statement said he "will not act in any way to impact the rights of colleagues when it comes to legislation" or try to change Senate rules that "now provide many tools for members, and leaders, to see legislative ideas brought to an up or down vote on the Senate floor."

Also on Tuesday, the Republican National Committee announced it would join the effort to stop the Democrats, sending e-mails calling for their supporters to contact Democratic senators and urge them to stop blocking Bush's nominees.

"Call your Democratic senator and tell them to do their job and give the president's judges an up or down vote!" the e-mail said.